

**2009 DRAFTING REQUEST**

**Bill**

Received: **03/11/2009**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Anthony Staskunas (608) 266-0620**

By/Representing: **Adrienne Ramirez**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Statute of limitations; DNA evidence

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 04/10/2009	nmatzke 04/30/2009		_____			
/1			rschluet 04/30/2009	_____	lparisi 04/30/2009		
/2	rryan 05/15/2009	nmatzke 06/04/2009	rschluet 06/04/2009	_____	sbasford 06/04/2009	lparisi 10/05/2009	

FE Sent For:

*none*

<END>

## 2009 DRAFTING REQUEST

### Bill

Received: 03/11/2009

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Anthony Staskunas (608) 266-0620

By/Representing: Adrienne Ramirez

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - procedure

Extra Copies:

Submit via email: YES

Requester's email: Rep.Staskunas@legis.wisconsin.gov

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Statute of limitations; DNA evidence

---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 04/10/2009	nnatzke 04/30/2009		_____			
/1			rschluet 04/30/2009	_____	lparisi 04/30/2009		
/2	rryan 05/15/2009	nnatzke 06/04/2009	rschluet 06/04/2009	_____	sbasford 06/04/2009		

FE Sent For:

<END>

## 2009 DRAFTING REQUEST

### Bill

Received: **03/11/2009**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Anthony Staskunas (608) 266-0620**

By/Representing: **Adrienne Ramirez**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Statute of limitations; DNA evidence

---

#### Instructions:

See attached

---


#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	rryan 04/10/2009	nmatzke 04/30/2009					
----	---------------------	-----------------------	--	--	--	--	--

/1			rschluet 04/30/2009		lparisi 04/30/2009		
----	--	--	------------------------	--	-----------------------	--	--

FE Sent For:

  
649  
<END>

**2009 DRAFTING REQUEST**

**Bill**

Received: **03/11/2009**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Anthony Staskunas (608) 266-0620**

By/Representing: **Adrienne Ramirez**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Statute of limitations; DNA evidence


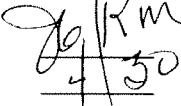
---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan	/1 <sup>nwm</sup> 4/29		 4/30			

FE Sent For:

<END>

**Ryan, Robin**

---

**From:** Ramirez, Adrienne  
**Sent:** Tuesday, March 10, 2009 4:50 PM  
**To:** Ryan, Robin  
**Subject:** Drafting Request

Robin –  
Last session you drafted LRB-183<sup>1</sup>/<sub>2</sub> introduced as AB 524 for our office.  
Rep. Staskunas would like you to redraft this proposal for introduction this session.  
Thank you for your assistance.

Adrienne  
Office of Rep. Tony Staskunas  
6-0620

In 4/10/09

## 2007 ASSEMBLY BILL 524

RMNR

D-N

P.W.F.

SA ✓  
X-ref ✓

October 4, 2007 - Introduced by Representatives STASKUNAS, ZIEGELBAUER, TURNER, SMITH, MUSSER, TOWNSEND, CULLEN, BERCEAU, POPE-ROBERTS, BIES, KESSLER, KAUFERT, SHERMAN, ALBERS, HRAYCHUCK and GUNDERSON, cosponsored by Senators KAPANKE, ROESSLER, LASSA and OLSEN. Referred to Committee on Criminal Justice.

- 1 AN ACT *to repeal* 939.74 (2d) (b) and 939.74 (2d) (c); *to amend* 939.74 (2) (c) and  
 2 939.74 (2) (cm); and *to create* 939.74 (2d) (bm), 939.74 (2d) (cm) and 939.74 (2d)  
 3 (d) of the statutes; **relating to:** time limitations for commencing prosecution  
 4 of crimes.

first-degree

*Analysis by the Legislative Reference Bureau****Extending time period for commencing prosecution of certain offenses when DNA evidence is available***

Under current law, the state generally must commence prosecution of a felony within six years of the offense and a misdemeanor within three years of the offense or be barred from prosecuting the offense. However, the following exceptions to this general rule apply: 1) there is no time limitation for commencing prosecution of first- or second-degree intentional homicide, first-degree reckless homicide, felony murder, or certain sexual assaults of a child; 2) prosecution of second-degree intentional homicide may be commenced within 15 years of the offense; 3) prosecution of certain sexual, enticement, or abuse offenses against children are extended until the victim of the offense reaches either age 26 or 45, depending on the offense; and 4) if the state collects DNA evidence in connection with certain sexual assaults or sexual assaults of a child before the applicable time period for commencing prosecution of the assault expires, but cannot match the DNA evidence with a known person until after the time period for commencing prosecution of the assault expires, the time period for commencing prosecution of the person who is the

a child

for trafficking

24

reckless

and if it does not, prosecution is barred

deoxyribonucleic acid



**ASSEMBLY BILL 524**

source of the DNA for the assault is extended. In addition, the time period for commencing prosecution of crimes that are related to the assault may be extended as well. Crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

INSA → This bill provides that if the state collects DNA evidence in connection with any felony that is codified as a crime against life or bodily security or a crime against children, and compares the evidence with DNA profiles of known persons, before the applicable time period for commencing prosecution of the felony expires, the time period for commencing prosecution of the person who is the source of the DNA for the felony, and for any crime that is related to the felony, is extended 12 months from the date on which the DNA match is made.

The bill further provides that if within six years after the commission of a felony listed under exception 1, above, the state collects DNA evidence in connection with the felony and compares the evidence with DNA profiles of known persons, the time period for commencing prosecution of the person who is the source of the DNA for a crime that is related to the felony is extended 12 months from the date on which the DNA match is made.

***Reconciliation of 2005 Acts***

The 2003 Wisconsin statutes provided that if the state collected DNA evidence in connection with a first- or second-degree sexual assault or first- or second-degree sexual assault of a child but could not match the DNA with a known person until after the time period for commencing prosecution of the assault expired, the time period for commencing the prosecution of the assault was extended 12 months from the date on which the match was made. 2005 Act 60 retained the 12-month extension of the time period for commencing prosecution of the assault and further allowed the state to commence prosecution, during the 12-month extension, of any crime that is related to the assault. Act 276 eliminated time limitations for commencing prosecution of certain first-degree sexual assaults of a child. 2005 Wisconsin Act 276 also eliminated the time limitation for commencing prosecution of first-degree sexual assault in cases in which the state collects DNA evidence in connection with the assault but does not match the DNA evidence to a known person until after the initial time period for prosecuting the assault expires. Act 276 was silent with respect to related crimes.

This bill eliminates time limitations for prosecuting certain first-degree sexual assaults of a child. The bill also eliminates time limitations for commencing prosecution of first-degree sexual assault in cases in which the state collects DNA evidence in connection with the assault and compares the DNA evidence with DNA profiles of known persons before the initial time period for commencing prosecution of the assault expires. Finally, the bill provides that the time period for commencing prosecution of a crime that is related to a first- or second-degree sexual assault or to certain sexual assaults of a child is extended 12 months from the date of making a DNA match if the state collects DNA evidence in connection with the assault and

**ASSEMBLY BILL 524**

compares the DNA evidence with DNA profiles of known persons before the initial time period for commencing prosecution of the assault expires.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           <sup>X</sup>  
SECTION 1. 939.74 (2) (c) of the statutes is amended to read:

2           939.74 (2) (c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03  
3           (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095  
4           shall may be commenced before the victim reaches the age of 45 years ~~or be barred,~~  
5           ~~except as provided in sub. (2d) (e).~~<sup>X</sup>

6           <sup>X</sup>  
SECTION 2. 939.74 (2) (cm) of the statutes is amended to read:

7           939.74 (2) (cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4),  
8           948.04 or 948.07 (5) or (6) shall may be commenced before the victim reaches the age  
9           of 26 years ~~or be barred.~~<sup>X</sup>

10          INS  
3-9 → SECTION 3. 939.74 (2d) (b) of the statutes, as affected by 2005 Wisconsin Acts  
11          60 and 276, is repealed.

12          SECTION 4. 939.74 (2d) (bm) of the statutes is created to read:

13          (13) 939.74 (2d) (bm) <sup>de</sup> If, before the time limitation under sub. (1) for ~~prosecuting~~  
14          a violation of s. 940.225 (1) <sup>✓</sup> expires, the state collects biological material that is  
15          evidence of the identity of the person who committed the violation, identifies a  
16          deoxyribonucleic acid profile from the biological material, and compares the  
17          deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the  
18          state may commence prosecution of the person who is the source of the biological  
19          material for the violation of s. 940.225 (1) <sup>✓</sup> at any time after comparison of the  
20          deoxyribonucleic acid profile relating to the violation results in a probable  
21          identification of the person <sup>✓</sup> and may commence prosecution of the person who is the

commencing prosecution of

## ASSEMBLY BILL 524

## SECTION 4

1 source of the biological material for a crime that is related to the violation under s.  
2 940.225 (1) within 12 months after comparison of the deoxyribonucleic acid profile  
3 relating to the violation results in a probable identification of the person. X

INS  
4-3  
4 SECTION 5. 939.74 (2d) (c) of the statutes, as affected by 2005 Wisconsin Acts  
5 60 and 276, is repealed.

6 SECTION 6. 939.74 (2d) (cm) of the statutes is created to read:

7 939.74 (2d) (cm) If, before the applicable time limitation under sub. (1) or (2)  
8 (am), (c), or (cm) for commencing prosecution of a felony under ch. 940 or 948, other  
9 than a felony under s. 940.225 (1) or a felony specified in sub. (2) (a), expires, the state  
10 collects biological material that is evidence of the identity of the person who  
11 committed the felony, identifies a deoxyribonucleic acid profile from the biological  
12 material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid  
13 profiles of known persons, the state may commence prosecution of the person who  
14 is the source of the biological material for the felony, or a crime that is related to the  
15 felony, within 12 months after comparison of the deoxyribonucleic acid profile  
16 relating to the felony results in a probable identification of the person.

17 SECTION 7. 939.74 (2d) (d) of the statutes is created to read:

18 (e) 939.74 (2d) (d) If, within 6 years after commission of a felony specified under  
19 sub. (2) (a), the state collects biological material that is evidence of the person who  
20 committed the felony, identifies a deoxyribonucleic acid profile from the biological  
21 material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid  
22 profiles of known persons, the state may commence prosecution of the person who  
23 is the source of the biological material for a crime that is related to the felony within  
24 12 months after comparison of the deoxyribonucleic acid profile relating to the felony  
25 results in a probable identification of the person. X

identity of  
the

1      **SECTION 8. Initial applicability.**

2           (1) This act first applies to any offenses the prosecution of which is not barred  
3           on the effective date of this subsection. ✓

4 (END)

D-note

**2009-2010 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2342/lins  
RLR:.....

1

**Ins A:**

The specific provisions for extending the time for commencing prosecution in cases in which the state collects DNA evidence are as follows:

1. First degree sexual assault: Under 2005 Wisconsin Act 276, if the state collects DNA evidence in connection with a first-degree sexual assault before the time for commencing prosecution of the first-degree sexual assault expires, the state may commence prosecution of the first-degree sexual assault at any time after making a DNA match. Under 2005 Wisconsin Act 60, the state may also commence prosecution for a crime that is related to the first-degree sexual assault within 12 months after making a DNA match.

2. Second-degree sexual assault: Under 2005 Wisconsin Acts 60 and 276, if the state collects DNA evidence in connection with a second-degree sexual assault before the time for commencing prosecution of the second-degree sexual assault expires, the state may commence prosecution of the second-degree sexual assault within 12 months after making a DNA match. Under 2005 Wisconsin Act 60, the state may also commence prosecution of a crime that is related to the second-degree sexual assault within 12 months after making a DNA match.

3. Second-degree and Class C felony repeated sexual assault of a child: Under current law, if the state collects DNA evidence in connection with a second-degree sexual assault of a child or a Class C felony repeated sexual assault of the same child (second-degree or Class C felony sexual assault of a child), the state may commence prosecution of the second-degree or Class C felony sexual assault of a child, or a crime that is related to the second-degree or Class C felony sexual assault of a child, within 12 months after making the DNA match. Additionally, if the state collects DNA evidence in connection with a second-degree or Class C felony sexual assault of a child before the time for commencing prosecution of a crime that is related to the second-degree or Class C felony sexual assault of a child expires, the state may commence prosecution of the related crime within 12 months after making a DNA match.

This bill extends application of the DNA evidence exception to time limits for commencing prosecution. Under the bill, if the state collects DNA evidence in connection with a crime against life or bodily security or a crime against children before the time for commencing prosecution of the felony expires, the state may commence prosecution of the felony, or a crime that is related to the felony, within 12 months after making a DNA match. In addition, the bill provides that if the state collects DNA evidence of a crime for which there is no time limit for commencing prosecution (first-<sup>degree</sup> or second-degree intentional homicide, first-degree reckless homicide, felony murder, or certain sexual assaults of a child) within six years after commission of that crime, the state may commence prosecution of a crime that is related to that crime, within 12 months after making a DNA match. Wisconsin

The bill reconciles 2005 Acts 60 and 276 by providing that: 1) if the state collects DNA evidence in connection with a first-degree sexual assault before the time for commencing prosecution of the first-degree sexual assault expires, the state may

commence prosecution of the first-degree sexual assault at any time after making a DNA match, and may commence prosecution of a crime that is related to the first-degree sexual assault within 12 months after making a DNA match; and 2) that if the state collects DNA evidence in connection with a second-degree sexual assault, the state may commence prosecution of the second-degree sexual assault, or a crime that is related to the second-degree sexual assault, within 12 months after making a DNA match.

1

2

**Ins 3-9:**

3

**SECTION 1.** 939.74 (2) (d) of the statutes is amended to read:

4

939.74 (2) (d) A prosecution for a violation of s. 948.051 shall may be

5

commenced before the victim reaches the age of 24 ~~or be barred~~.

History: 1981 c. 280; 1985 a. 275; 1987 a. 322, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237; 2001 a. 16, 109; 2003 a. 196, 279, 326; 2005 a. 60, 276, 277; 2007 a. 80, 97, 116

6

**SECTION 2.** 939.74 (2d) (b) of the statutes, as affected by 2005 Wisconsin Acts

7

60<sup>✓</sup> and 276<sup>✓</sup>, is repealed and recreated to read:<sup>✓</sup>

8

9

**Ins 4-3:**

10

**SECTION 3.** 939.74 (2d) (c) of the statutes is amended to read:

11

939.74 (2d) (c) If, before the applicable time limitation under sub. (1)<sup>✓</sup> or (2)

(12)

(am)<sup>✓</sup>, (c)<sup>✓</sup>, (cm)<sup>✓</sup>, or (d) ~~expired~~ for commencing prosecution of a felony under ch. 940<sup>✓</sup>

13

or 948<sup>✓</sup>, other than a felony under s. 940.225 (1)<sup>✓</sup> or a felony specified in sub. (2) (a)<sup>✓</sup>,

14

expires, the state collected collects biological material that is evidence of the identity

(15)

of the person who committed <sup>Strike extra space</sup> a violation of s. 948.02 (2) or 948.025 (1) (e) the felony,

16

~~the state identified~~ identifies a deoxyribonucleic acid profile from the biological

17

material, and ~~comparisons of that~~ compares the deoxyribonucleic acid profile to

18

deoxyribonucleic acid profiles of known persons ~~did not result in a probable~~

19

identification of the person who is the source of the biological material, the state may

20

commence prosecution of the person who is the source of the biological material for

1 the ~~violation of s. 948.02 (2) or 948.025 (1) (e) felony~~ or a crime that is related to the  
2 ~~violation~~ felony or both within 12 months after comparison of the deoxyribonucleic  
3 acid profile relating to the ~~violation~~ felony results in a probable identification of the  
4 person.✓

**History:** 1981 c. 280; 1985 a. 275; 1987 a. 32, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237; 2001 a. 16, 109; 2003 a. 196, 279, 326; 2005 a. 60, 276, 277; 2007 a. 80, 97, 116.✓✓

5 **SECTION 4.** 939.74 (2d) (d) of the statutes is repealed.✓

6

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2342/1dn

RLR: f.....

nwn

Date

Representative Staskunas:

(7) *stet*  
@  
A or B  
first  
This is a redraft of 2007 Assembly Bill 524. 2007 Act 80 affected DNA evidence exceptions to time limits for commencing prosecution. Please review the changes I made to AB 524 to account for Act 80, particularly changes to the time limits for prosecuting crimes that are related to a second-degree sexual assault of a child under s. 948.02(1) or to a Class C felony repeated sexual assault of the same child under s. 948.025 (1). Act 80 created s. 939.74 (2d) (d), which provides that if the state collects DNA evidence of the identity of a person who committed a second-degree sexual assault of a child or a Class C felony repeated sexual assault of a child before the time expires for commencing prosecution a crime that is related to the assault, the state may prosecute the related crime within 12 months after making a DNA match. This draft repeals s. 939.74 (2d) (d) and provides that if the state collects DNA evidence of any felony under ch. 940 or 948 before the time for commencing prosecution of that felony expires, the state may commence prosecution of a crime that is related to that felony within 12 months after making the DNA match.

(a) (b) (c) or (d)  
A or B

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2342/1dn

RLR:nwn:rs

April 30, 2009

Representative Staskunas:

This is a redraft of 2007 Assembly Bill 524. 2007 Act 80 affected DNA evidence exceptions to time limits for commencing prosecution. Please review the changes I made to AB 524 to account for Act 80, particularly changes to the time limits for prosecuting crimes that are related to a first-degree sexual assault of a child under s. 948.02 (1) or to a Class A or B felony repeated sexual assault of the same child under s. 948.025 (1) (a), (b), (c), or (d). Act 80 created s. 939.74 (2d) (d), which provides that if the state collects DNA evidence of the identity of a person who committed a first-degree sexual assault of a child or a Class A or B felony repeated sexual assault of a child before the time expires for commencing prosecution a crime that is related to the assault, the state may prosecute the related crime within 12 months after making a DNA match. This draft repeals s. 939.74 (2d) (d) and provides that if the state collects DNA evidence of any felony under ch. 940 or 948 before the time for commencing prosecution of that felony expires, the state may commence prosecution of a crime that is related to that felony within 12 months after making the DNA match.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2342/1

RLR:nwn:rs

In 3/15/09

2009 BILL

RMR

D-N

SA ✓  
X-ref ✓

Regen.

- 1 AN ACT *to repeal* 939.74 (2d) (d); *to amend* 939.74 (2) (c), 939.74 (2) (cm), 939.74  
2 (2) (d) and 939.74 (2d) (c); *to repeal and recreate* 939.74 (2d) (b); and *to create*  
3 939.74 (2d) (e) of the statutes; **relating to:** time limitations for commencing  
4 prosecution of crimes.

---

***Analysis by the Legislative Reference Bureau***

***Extending time period for commencing prosecution of certain offenses when  
DNA evidence is available***

Under current law, the state generally must commence prosecution of a felony within six years of the offense and a misdemeanor within three years of the offense and if it does not, prosecution is barred. However, the following exceptions to this general rule apply: 1) there is no time limitation for commencing prosecution of first-degree or second-degree intentional homicide, first-degree reckless homicide, felony murder, or certain sexual assaults of a child; 2) prosecution of second-degree reckless homicide may be commenced within 15 years of the offense; 3) prosecution of certain sexual, enticement, abuse, or trafficking offenses against a child are extended until the victim of the offense reaches either age 24, 26, or 45, depending on the offense; and 4) if the state collects deoxyribonucleic acid (DNA) evidence in connection with certain sexual assaults or sexual assaults of a child before the applicable time period for commencing prosecution of the assault expires, but cannot match the DNA evidence with a known person until after the time period for commencing prosecution of the assault expires, the time period for commencing

**BILL**

prosecution of the person who is the source of the DNA for the assault is extended. In addition, the time period for commencing prosecution of crimes that are related to the assault may be extended as well. Crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

The specific provisions for extending the time for commencing prosecution in cases in which the state collects DNA evidence are as follows:

1. First degree sexual assault: Under 2005 Wisconsin Act 276, if the state collects DNA evidence in connection with a first-degree sexual assault before the time for commencing prosecution of the first-degree sexual assault expires, the state may commence prosecution of the first-degree sexual assault at any time after making a DNA match. Under 2005 Wisconsin Act 60, the state may also commence prosecution for a crime that is related to the first-degree sexual assault within 12 months after making a DNA match.

2. Second-degree sexual assault: Under 2005 Wisconsin Acts 60 and 276, if the state collects DNA evidence in connection with a second-degree sexual assault before the time for commencing prosecution of the second-degree sexual assault expires, the state may commence prosecution of the second-degree sexual assault within 12 months after making a DNA match. Under 2005 Wisconsin Act 60, the state may also commence prosecution of a crime that is related to the second-degree sexual assault within 12 months after making a DNA match.

3. Sexual assault of a child: Under current law, if the state collects DNA evidence in connection with a second-degree sexual assault of a child or a Class C felony repeated sexual assault of the same child (second-degree or Class C felony sexual assault of a child), the state may commence prosecution of the second-degree or Class C felony sexual assault of a child, or a crime that is related to the second-degree or Class C felony sexual assault of a child, within 12 months after making the DNA match. Additionally, if the state collects DNA evidence in connection with a first-degree or second-degree sexual assault of a child or a Class A, B, or C felony repeated sexual assault of the same child before the time for commencing prosecution of a crime that is related to the sexual assault or repeated sexual assault of a child expires, the state may commence prosecution of the related crime within 12 months after making a DNA match.

This bill extends application of the DNA evidence exception to time limits for commencing prosecution. Under the bill, if the state collects DNA evidence in connection with a crime against life or bodily security or a crime against children before the time for commencing prosecution of the felony expires, the state may commence prosecution of the felony, or a crime that is related to the felony, within 12 months after making a DNA match. In addition, the bill provides that if the state collects DNA evidence of a crime for which there is no time limit for commencing prosecution (first-degree or second-degree intentional homicide, first-degree reckless homicide, felony murder, or certain sexual assaults of a child) within six years after commission of that crime, the state may commence prosecution of a crime that is related to that crime, within 12 months after making a DNA match.

**BILL**

The bill reconciles 2005 Wisconsin Acts 60 and 276 by providing that: 1) if the state collects DNA evidence in connection with a first-degree sexual assault before the time for commencing prosecution of the first-degree sexual assault expires, the state may commence prosecution of the first-degree sexual assault at any time after making a DNA match, and may commence prosecution of a crime that is related to the first-degree sexual assault within 12 months after making a DNA match; and 2) that if the state collects DNA evidence in connection with a second-degree sexual assault, the state may commence prosecution of the second-degree sexual assault, or a crime that is related to the second-degree sexual assault, within 12 months after making a DNA match.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 939.74 (2) (c) of the statutes is amended to read:

2           939.74 (2) (c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03

3           (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095

4           ~~shall~~ <sup>plain</sup> may be commenced before the victim reaches the age of 45 years ~~or be barred,~~ <sup>plain</sup>

5           ~~except as provided in sub. (2d)~~ (e). <sup>plain</sup>

6           **SECTION 2.** 939.74 (2) (cm) of the statutes is amended to read:

7           939.74 (2) (cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4),

8           948.04 or 948.07 (5) or (6) ~~shall~~ <sup>plain</sup> may be commenced before the victim reaches the age,

9           of 26 years ~~or be barred,~~ <sup>plain</sup> except as provided in sub. (2d) <sup>plain</sup>

10          **SECTION 3.** 939.74 (2) (d) of the statutes is amended to read:

11          939.74 (2) (d) A prosecution for a violation of s. 948.051 ~~shall~~ <sup>plain</sup> may be

12          commenced before the victim reaches the age of 24 ~~or be barred,~~ <sup>plain</sup>

13          **SECTION 4.** 939.74 (2d) (b) of the statutes, as affected by 2005 Wisconsin Acts

14          60 and 276, is repealed and recreated to read:

15          939.74 (2d) (b) If, before the time limitation under sub. (1) for commencing

16          prosecution of a violation of s. 940.225 (1) expires, the state collects biological

17          material that is evidence of the identity of the person who committed the violation,

except as provided in sub. (2d)

**BILL****SECTION 4**

1 identifies a deoxyribonucleic acid profile from the biological material, and compares  
2 the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons,  
3 the state may commence prosecution of the person who is the source of the biological  
4 material for the violation of s. 940.225 (1) at any time after comparison of the  
5 deoxyribonucleic acid profile relating to the violation results in a probable  
6 identification of the person and may commence prosecution of the person who is the  
7 source of the biological material for a crime that is related to the violation under s.  
8 940.225 (1) within 12 months after comparison of the deoxyribonucleic acid profile  
9 relating to the violation results in a probable identification of the person.

10 **SECTION 5.** 939.74 (2d) (c) of the statutes is amended to read:

11 939.74 (2d) (c) If, before the applicable time limitation under sub. (1) or (2)  
12 (am), (c) expired, (cm), or (d) for commencing prosecution of a felony under ch. 940  
13 or 948, other than a felony under s. 940.225 (1) or a felony specified in sub. (2) (a),  
14 expires, the state ~~collected~~ collects biological material that is evidence of the identity  
15 of the person who committed ~~a violation of s. 948.02 (2) or 948.025 (1) (e) the felony,~~  
16 ~~the state identified~~ identifies a deoxyribonucleic acid profile from the biological  
17 material, and ~~comparisons of that~~ compares the deoxyribonucleic acid profile to  
18 deoxyribonucleic acid profiles of known persons ~~did not result in a probable~~  
19 ~~identification of the person who is the source of the biological material,~~ the state may  
20 commence prosecution of the person who is the source of the biological material for  
21 ~~the violation of s. 948.02 (2) or 948.025 (1) (e) felony~~ or a crime that is related to the  
22 ~~violation~~ felony or both within 12 months after comparison of the deoxyribonucleic  
23 acid profile relating to the ~~violation~~ felony results in a probable identification of the  
24 person.

25 **SECTION 6.** 939.74 (2d) (d) of the statutes is repealed.

# BILL

**SECTION 7.** 939.74 (2d) (e) of the statutes is created to read:

939.74 (2d) (e) If, within 6 years after commission of a felony specified under sub. (2) (a), the state collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the state may commence prosecution of the person who is the source of the biological material for a crime that is related to the felony within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the person.

## SECTION 8. Initial applicability.

(1) This act first applies to any offenses the prosecution of which is not barred on the effective date of this subsection.

**(END)**

D-note



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

LRB 2342/1

5/15/05

Call to Adrienne:

I noticed drafting error -  
I shouldn't have deleted "or be  
banned" in §39.74 (a)(c), (cm),  
and (d). I should restore  
deletions or change analysis.

Adrienne: restore deletions

(Reference in State v. MacArthur 310 Wis 2d 550  
(2008) treats age 45 as  
limit even though 6 years  
hadn't run due to tolling - Court  
doesn't address meaning of age bar)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2342/2dn

RLR:nwn:rs

May 15, 2009

Adrienne:

As we discussed on the phone today, I am redrafting to correct an error I made in the prior version of this draft. This version restores language in s. 939.74 (2) (c), (cm), and (d) that I had repealed in the prior version of the draft, and creates exceptions in those paragraphs for cases involving DNA evidence.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: [robin.ryan@legis.wisconsin.gov](mailto:robin.ryan@legis.wisconsin.gov)

**Parisi, Lori**

---

**From:** Ramirez, Adrienne  
**Sent:** Monday, October 05, 2009 2:40 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-2342/2 Topic: Statute of limitations; DNA evidence

Please Jacket LRB 09-2342/2 for the ASSEMBLY.